

**U.S. Election Assistance Commission
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**FREQUENTLY ASKED QUESTIONS REGARDING
APPROPRIATE USES OF HAVA FUNDS**

This FAQ is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely as a guide. If legal or other expert advice is required or desired with regard to a specific question or course of action, the services of an appropriate, competent professional should be sought.

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INTRODUCTION

The Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (EAC) and required election officials throughout the country to implement various election administration reforms. To assist with those efforts, Congress authorized and appropriated more than \$3 billion. One of the primary responsibilities of the EAC is to provide the states, insular territories and the District of Columbia with the funding appropriated under HAVA and to provide information and training on the appropriate management and use of those funds.

Over the past two years, EAC has answered dozens, if not hundreds, of questions from election administrators around the country regarding the appropriate use of HAVA funds. In order to provide all election administrators with information regarding the types of questions that EAC has received and the answers that it has given, we have compiled the following frequently asked questions.

Prior to considering the individual questions and answers there is some information that is fundamental to each of them and which covers the basic limitations on the uses of HAVA funds.

Sources and Uses of HAVA Funds

There are three sources of funding provided by HAVA for use to improve the administration of federal elections and to meet the requirements of Title III of HAVA (specifically to implement provisional voting, to improve voting technology, to develop and implement a statewide voter registration database, to provide information to voters, and to verify and identify voters according to the procedures set forth in HAVA). Those sources are Section 101, Section 102 and Section 251 funds.

The funds received by a state under Section 101 can be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting

technology.

D. Training election officials, poll workers, and election volunteers.

E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.

F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.

G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.

H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with Section 301(a) of HAVA.

Section 251 funds can be used to implement any of the Title III requirements, including purchasing compliant voting systems, implementing provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states and local governments can use HAVA funds to improve the administration of elections for Federal office when one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies EAC of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose.

The uses of Section 251 funds (and Section 101 funds, when used to meet the requirements of Title III) must be accounted for in the state's plan as originally submitted or later amended. Any material change in the use of 251 funds (and Section 101 funds as specified above) from the approved state plan will require the state to revise its plan and submit the revisions to the EAC for publication and approval.

Costs must be Allowable, Allocable and Reasonable

In addition to the restrictions on the uses of funds imposed by HAVA, when these funds were distributed by either the General Services Administration (GSA) or the EAC, those funds were made subject to several circulars developed by the [Office of Management and Budget](#), specifically OMB Circulars [A-87](#) (governs the use of federal funds to purchase goods for state and local governments), [A-102](#) (governs the management of federal funds for state and local governments), [A-122](#) (governs the use of federal funds to purchase goods for non-profits) and [A-133](#) (dealing with audits). These circulars further restrict the appropriate uses of Federal funds requiring generally that costs paid for by HAVA funds are allowable, allocable (directly or through an indirect cost rate), and reasonable.

Allowable Costs

A cost is allowable if it is necessary for the proper and efficient performance and administration of the federally sponsored program. Costs that fall within the specifically identified uses of HAVA funds in either Sections 101, 102 or Title III are allowable.

Allocable Costs

A state can allocate an expense by charging only a portion equal to the percentage of use for

HAVA related purposes to the HAVA grant. This can be accomplished by either using only that percentage of HAVA fund per unit cost or by seeking reimbursement from the other departments within the state for their portion of the usage. The question of allocability arises generally in one of two circumstances. First, is the cost allocable to the program to which it is billed? Just because a cost is allowable under one or more funding programs of HAVA do not mean that it is allocable to each and every program. For example, if an expense is not directly related to meeting any of the Title III requirements, it is allocable only to Section 101 funds and Section 251 funds pursuant to the provisions of Section 251(b) that allow for the use of Title II funds for the improvement of the administration of elections for federal office only up to the minimum payment amount. Second, is the cost allocable to benefit a Federal election? Most of the uses identified in HAVA require the funds to be used to benefit a Federal election. Thus, costs that strictly benefit a state or local election are not allocable to the HAVA funding programs.

Indirect Costs

In some circumstances, the expense may be an indirect one that can be covered by an indirect cost rate. In that instance, the state may submit an indirect cost rate proposal in which it identifies and supplies information regarding direct and indirect costs of operation. Circular A-87 and ASMB C-10, *Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government*, provide guidance on negotiating indirect costs rates.

An indirect cost rate provides a state with the basis for allocating administrative costs that are inextricably linked to other services provided by the Secretary of State such that they cannot easily be segregated into those costs that directly benefit the HAVA funding program and those that do not. For example, the cost of printers and copy machines that are used for both Federal and State election activities and that are below the State's threshold for capitalized equipment may be expensed and included in the indirect cost pool. On the other hand, if you include an asset in the fixed capital assets section of your balance sheet and depreciate the asset, you should consider the asset as a capital expenditure and include only depreciation expense in the pool.

[Click here](#) to see a power point presentation on indirect costs presented by KPMG on behalf of the EAC.

Reasonable Costs

A state must do some assessment as to whether the costs are reasonable. This is done by determining that the cost is justified based upon factors such as the frequency of use, leasing versus purchasing, and actual cost for the good or service.

SPECIFIC AREAS OF COST

The following questions cover specific areas and items that states, insular territories and the District of Columbia have asked the EAC about using HAVA funds to purchase. In order to be permissible, the use of funds must be permitted by the HAVA source and meet other Federal funds requirements discussed above. The questions are categorized for ease of use. The reader can use any of the following links to jump to the category of interest.

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Equipment

The cognizant agency for the funding program has the authority to pre-approve or waive the right to pre-approve the purchase of any capital equipment (generally equipment with a unit cost of \$5,000 or more) or capital improvements with grant funds. ([See Attachment B of A-87, Section 15. Equipment and other capital expenditures](#)). For purposes of HAVA funds, EAC is the cognizant agency. EAC will acknowledge and use the state's definition of capitalized equipment for purposes of requiring pre-approval of expenditure. Thus, if the state's definition sets forth a dollar amount lower (but not higher) than \$5,000, then the state's amount will serve as the threshold for requiring pre-approval. Equipment below the threshold is considered supplies. ([See Attachment B, Section 26. Materials and Supplies.](#)) No pre-approval or waiver is required for supplies.

EAC has waived its right to pre-approve **ONLY** the purchase of voting equipment that complies with Section 301 of HAVA and any computer equipment used solely for the purpose of developing or operating the statewide voter registration list. Conversely, the EAC has not waived its right to pre-approve the use of HAVA funds for other items that may be required to meet the requirements of Title III or that may be used to improve the administration of elections for Federal office.

Prior to purchasing any equipment with HAVA funds you should determine the answers to the following:

1. What is my state's dollar threshold in determining the definition of what is equipment?
2. What HAVA funding source will be used?
3. Do I need to get EAC permission or ask them to waive the right to pre-approve the purchase?
4. Is the cost allowable?
5. How will the cost be allocated?
6. Is the cost reasonable?
7. If Section 251 funds are used will this be a material change to the state HAVA plan?

The answers to the questions listed below are not self contained. They are based in large part on the information that has been provided above regarding the stated uses of HAVA funds and the information provided with regard to determining whether an item is allowable, allocable and reasonable. That information is fundamental to ensuring an accurate answer, and proper use of HAVA funds.

Leasing Equipment

1. May a state lease equipment?

Leasing equipment is considered an allowable expense under [OMB Circular A-87, according to the limitations and conditions of Attachment B, 37](#). Rental Costs of Buildings and Materials. The limitations include that "sale and lease back" arrangements cannot cost the state or local government more than when it owned the property. The costs include expenses such as depreciation or use allowance, maintenance, taxes, and insurance. A "less-than-arms-length" agreement (i.e., a state government established a corporation to own the property then leases it back to the state) cannot cost the state or local government more than if title had vested in the state or local government.

Rental costs under leases which are required to be treated as capital leases under Generally Accepted Accounting Principles (GAAP) are allowable only up to the amount that would be allowed had the state or local government purchased the property on the date the lease agreement was executed. The provisions of [Financial Accounting Standards Board Statement 13, Accounting for Leases](#), determine whether a lease is a capital lease. The determination is based on factors such as if the lease transfers ownership of the property to the lessee by the end of the lease term; contains a bargain purchase option; the lease term is equal to 75 percent or more of the estimated economic life of the leased property unless the lease term falls within the last 25 percent of the total estimated economic life of the leased property; or the present value at the beginning of the lease term of the minimum lease payments excluding executory costs such as insurance, maintenance, and taxes to be paid by the lessor, including any profit, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease.

DeMinimis Uses of Equipment

2. May HAVA funds be used to support de minimus uses of equipment by the State

for non-HAVA related purposes?

No. The State can allocate only that portion of the equipment purchase cost that will go to benefit the state's HAVA program. Alternatively, the expenses may qualify as an indirect cost in which case the state may submit an indirect cost rate proposal in which it identifies and supplies information regarding direct and indirect costs of operation.

Cellular Telephones

3. May HAVA funds be used to purchase cellular phones in administering elections and maintaining contact with polling places on Election Day?

Cellular phones would generally be considered an allowable cost. However, because this expense is not directly related to meeting any of the Title III requirements, the expense could be allocated only to Section 101 funds or Section 251 funds pursuant to Section 251(b). Before a final decision can be made with regard to this expense, the question of cost reasonableness must be considered and answered. For example, it may be more reasonable to purchase prepaid cellular phones rather than to purchase phones with monthly plans that will only be used infrequently or periodically.

Motorized Vehicles

4. May a State use HAVA funds to purchase motorized vehicles for use in voter outreach efforts?

While motorized vehicles are an allowable cost when they are used for voter education pursuant to Section 101(b)(1)(C) of HAVA, there are significant issues related to allocability and cost reasonableness that must still be considered in assessing the appropriateness of such an expense. For example, if the vehicle will not be used exclusively for the purpose of voter outreach or other activities associated with improving the administration of federal elections and are used for purposes unrelated to improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Even in this instance, the appropriate percentage of cost could only be allocated to the funding programs under Section 101 or Section 251(b). As for the reasonableness analysis, it may be more reasonable to rent a vehicle rather than to purchase, insure and maintain vehicles that will only be used infrequently or periodically.

5. May a State use HAVA funds to purchase forklifts used to move and store voting equipment within a warehouse?

Forklifts used exclusively for stacking, moving and storing voting equipment are an allowable cost for this stated purpose. Because this expense is not directly related to meeting any of the Title III requirements, such a cost can be allocated ONLY to Section 101 funds or Section 251 funds pursuant to Section 251(b). However, allocability and cost reasonableness must still be considered. For example if the forklift will not be used exclusively for the purpose of moving stored voting equipment and are used for purposes unrelated to improving the administration of

federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Similarly, it may be more reasonable to rent a forklift rather than to purchase and maintain forklifts that will only be used infrequently or periodically.

Office Furniture and Equipment

6. May HAVA funds be used to purchase office furniture (tables, cabinets and desks) for the new voting systems equipment and statewide voter registration database equipment?

Office furniture would generally be considered an allowable cost as long as such cost is not covered by the maintenance of effort requirements imposed by Section 254(a)(7). The purchase of office furniture is only allowable if it can be demonstrated that the furniture would improve the administration of Federal elections. As such, those costs could only be allocated to the funding programs under Sections 101 and 251(b). Factors such as allocability and cost reasonableness must still be considered. For example if the office furniture will not be used exclusively for the purpose of improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Furthermore, the cost for the furniture must be reasonable as compared to what the election jurisdiction is getting.

7. May HAVA funds be used to purchase storage cabinets, security cages and shelving for storage of ballots to secure and store ballots as required by state and federal law?

Storage cabinets and shelving are allowable costs as long as they are not covered by the required maintenance of effort. See Section 254(a)(7). Because this expense would not be directly related to meeting any of the Title III requirements, it could be allocated only to funding programs under Sections 101 and 251(b). Cost principles such as allocability and cost reasonableness must still be considered. For example, if the security cages and shelving will not be used exclusively for the purpose of improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant.

8. May HAVA funds be used to purchase high speed letter openers to process absentee ballots?

High speed letter openers are an allowable cost for this stated purpose. As this expense is not directly related to meeting any of the Title III requirements, the cost can be allocated only to the Section 101 funding program or to Section 251 funds pursuant to Section 251(b). Allocability and cost reasonableness must be considered in assessing the propriety of this type of expense. If the letter opener will not be used exclusively for the purpose of opening absentee ballots and other mail unrelated to improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Similarly, depending on the volume of mail it may be more reasonable to manually open the letters.

9. May HAVA funds be used for a mail processing system that will assemble, sort, label and affix proper postage amounts for all outgoing mail, including absentee ballots from the Elections Office?

This type of mail processing system is an allowable cost for the stated purpose. Because this expense is not directly related to meeting any of the Title III requirements, it may be allocated

only to the funding programs established in Section 101 or Section 251 funds pursuant to Section 251(b). However, allocability and cost reasonableness must be considered to fully assess the appropriateness of such an expense. For example, if the mail processing system will not be used exclusively for the purpose of processing mail related to improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Similarly, depending on the volume of mail it may be more reasonable to manually process the mail.

Voting Systems

10. May a State use HAVA funds to purchase absentee voting equipment?

States and its counties may use funds distributed under Section 101 or Section 251 to purchase voting equipment used to conduct absentee voting as long as that equipment meets the requirements of Section 301(a) of HAVA. The definition of voting system in Section 301(b) of HAVA includes equipment used to administer absentee voting. As such, no pre-approval from the EAC is required prior to purchase. However, cost reasonableness must still be considered in selecting the equipment. The cost must be reasonably related to the value of the equipment purchased.

11. May a State or local government use HAVA funds to purchase additional accessible voting equipment?

Yes. States and its counties may use funds distributed under Section 101 or Section 251 to purchase additional accessible voting equipment as long as that equipment meets the requirements of Section 301(a) of HAVA.

12. May HAVA funds be used to purchase voting systems with Voter Verified Paper Audit Trail (VVPAT) capabilities?

The answer depends on whether the purchase of VVPAT is part of the purchase of a compliant voting system (under Section 301(a)) or if it is purchased as a retrofit for a compliant voting system. If it is a component of a voting system that is being purchased, then section 251 funds can be used to the same extent that they are available to meet the requirements of Title III. However, if the VVPAT is purchased as a retrofit, then 251 funds can be used ONLY to the extent that they can be used to improve the administration of federal elections (see 251(b)(2)), as VVPAT is not a required component of voting systems under section 301(a) and would serve only to improve the administration of elections. Also, Section 101 funds can be used. Section 102 funds would not be appropriate for a retrofit VVPAT because VVPAT is not a requirement of Section 301.

13. Does the EAC give opinions as to whether a specified voting system would be considered compliant with HAVA Section 301(a)?

No. EAC does not believe that it was the intention of Congress for this Commission to pre-clear or approve the purchase of voting systems by states and local governments. Rather, Congress intended that EAC provide information and guidance on the meaning and implementation of HAVA. Furthermore, EAC has waived its right to pre-approve the expenditure of HAVA funds on compliant voting systems.

UPDATED: 14. Does HAVA Section 301(a)(3)(C) mean that if HAVA funds are used after January 1, 2007 to purchase a voting system (or any additional voting units), the funds can only be used to purchase voting units that meet the accessibility requirements of Section 301(a)(3)?

The January 1, 2007 date referenced in Section 301(a)(3)(C) applies to when the funds are provided, not when the equipment is purchased. The HAVA funds (provided under sections 101, 102, or 251) the States currently have were all provided prior to January 1, 2007. If a jurisdiction already meets the accessibility requirements under Section 301(a)(3) and they wish to purchase additional voting systems, the State would not be required to procure additional voting equipment that is accessible to persons with disabilities. Nevertheless, the equipment procured with those funds must meet all other HAVA section 301 requirements. If states receive additional HAVA funding from the EAC after January 1, 2007 and wish to use that funding to purchase new voting systems, then all equipment purchased with the new funding must meet the requirements of Section 301(a)(3). If mixed funding sources are used in future voting system procurements, states will have to separately account for restricted and unrestricted money separately if the State wishes to purchase non-accessible equipment.

Capital Improvements

A capital improvement is an improvement to any structure (building) or component erected as a permanent fixture on real property (land) that adds to its value and useful life. The cognizant agency for the funding program, EAC in this case, has the authority to pre-approve or waive the right to pre-approve the purchase of any capital equipment (generally equipment with a unit cost of \$5,000 or more) or capital improvements made with grant funds. ([See Attachment B of A-87, Section 15. Equipment and other capital expenditures](#)). EAC does not waive its right to pre-approve capital improvements.

Prior to making any capital improvements with HAVA funds you should determine the answers to the following:

1. What is my states dollar threshold in determining the definition of a capitol improvement?
2. What HAVA funding source will be used?
3. Do I need to get EAC permission or ask them to waive the right to preapprove the improvement? EAC permission is required.
4. Is the cost allowable?
5. How will the cost be allocated?
6. Is the cost reasonable?
7. If Section 251 funds are used will this be a material change to the state HAVA plan?

If the facility to be improved is not owned by the State or local government, the State or local government must have a guarantee of use of that facility for at least the length of time that the State could claim full depreciation of the improvement according to standard accounting procedures.

The answers to the questions listed below are not self contained. They are based in large part on the information that has been provided above regarding the stated uses of HAVA funds and the

information provided with regard to determining whether an item is allowable, allocable and reasonable. That information is fundamental to ensuring an accurate answer, and proper use of HAVA funds.

15. Can a State or local government use HAVA funds to upgrade wiring so that the election office can connect its locality LAN to access the Internet?

Generally, upgrading wiring is an allowable cost for this purpose. Upgrading wiring is justified if it improves the administration of Federal elections. It can be paid for using Section 101 funds or Section 251 funds up to the minimum payment identified in Section 252. However allocability and cost reasonableness must still be considered. For example, if the internet wiring will not be used exclusively for the purpose of improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant.

16. May HAVA funds be used to make polling places used in Federal elections accessible to people with disabilities if those polling places will be used in future elections?

Generally, making polling places accessible is an allowable cost. However, this expense is not directly related to meeting any of the Title III requirements. As such, this cost can be allocated only to funding programs under Section 101 or Section 251(b).

17. Can a locality be reimbursed with HAVA funds for ADA modifications to polling places made before HAVA became law on October 29, 2002?

No. HAVA provides only for reimbursement of expenses related to voting system purchases. There is no provision for the reimbursement of expenses incurred to improve access to polling places.

18. Can a locality use HAVA funds to make modifications to a storage space in order to provide appropriate storage for voting equipment?

Generally, making modifications to a warehouse to store voting equipment is an allowable cost. However, this expense is not directly related to meeting any of the Title III requirements. Only Section 101 funds or Section 251(b) funds may be used for this expense. However allocability and cost reasonableness must still be considered. For example, if the warehouse modification will not be used exclusively for the purpose of improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Similarly, it may be more reasonable to select a different warehouse rather than retrofit the current structure.

19. May HAVA Section 101 or 251 funds be used to purchase a building to be used for warehouse voting system equipment?

Generally, purchasing a warehouse to store voting equipment is an allowable cost. This expense is not directly related to meeting any of the Title III requirements. Thus, only Section 101 or Section 251(b) funds may be used. Factors such as allocability and cost reasonableness must still

be considered in determining the appropriateness of the expense. For example, if the warehouse will not be used exclusively for the purpose of improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Similarly, it may be more reasonable to rent a warehouse rather than purchase one.

20. Can HAVA Section 102 funds be used to buy, rent or improve a warehouse to store voting systems?

No. Section 102 of HAVA grants payments to states for the purpose of replacing punch card and lever voting systems not for the storage or warehousing of such equipment.

21. May HAVA funds be used to rent space to store voting equipment purchased to meet HAVA requirements?

Generally, renting a warehouse to store voting equipment is considered to be an allowable cost. This expense is not directly related to meeting any of the Title III requirements. Thus, only Section 101 or Section 251(b) funds may be used. Factors such as allocability and cost reasonableness must still be considered in order to determine the appropriateness of this type of expense. If the warehouse will not be used exclusively for the purpose of improving the administration of federal elections (e.g., rental space would be used to house equipment other than voting systems that would be used in federal elections), only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant.

[Rental costs of buildings and equipment are covered by OMB Circular A-87, see the section on Rental costs of buildings and equipment.](#) Rental costs under leases which are required to be treated as capital leases under Generally Accepted Accounting Principles (GAAP) are allowable only up to the amount that would be allowed had the state or local government purchased the property on the date the lease agreement was executed. The provisions of [Financial Accounting Standards Board Statement 13](#), Accounting for Leases, determine whether a lease is a capital lease. The determination is based on factors such as if the lease transfers ownership of the property to the lessee by the end of the lease term; contains a bargain purchase option; the lease term is equal to 75 percent or more of the estimated economic life of the leased property unless the lease term falls within the last 25 percent of the total estimated economic life of the leased property; or the present value at the beginning of the lease term of the minimum lease payments excluding executory costs such as insurance, maintenance, and taxes to be paid by the lessor, including any profit, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease.

Other Uses of HAVA Funds

The following questions deal with spending of HAVA funds on conference attendance, training, voter outreach and other non equipment or non capital improvement expenses; and costs incurred prior to getting HAVA funds, reimbursements.

The answers to the questions listed below are not self contained. They are based in large part on

the information that has been provided above regarding the stated uses of HAVA funds and the information provided with regard to determining whether an item is allowable, allocable and reasonable. That information is fundamental to ensuring an accurate answer, and proper use of HAVA funds.

Prior to spending HAVA funds on non-equipment purchases or capital improvements you should determine the answers to the following:

1. What HAVA funding source will be used?
2. Do I need to get EAC permission or ask them to waive the right to pre-approve the use of funds? EAC permission is required.
3. Is the cost allowable?
4. How will the cost be allocated?
5. Is the cost reasonable?
6. If Section 251 funds are used will this be a material change to the state HAVA plan?

Conference Attendance

22. May HAVA funds be used to send elections office employees to an election industry association conference to see available voting equipment?

Generally, HAVA funds may be used to attend an election industry association conference to see available voting equipment if such funds were not a part of the state's maintenance of effort requirement. HAVA funds may not be used to pay dues to the association. Because this expense is not directly related to meeting any of the Title III requirements, only Section 101 or Section 251 (b) funds may be used.

Training Voters

23. May a State or local government use HAVA funds to

- § **produce public service announcements about new voting equipment;**
- § **take new equipment out to the public (e.g., senior centers, schools, grocery stores, malls or shopping centers) in advance of the first election in which the new equipment will be used;**
- § **produce customized written material on voters' rights and responsibilities for use on Election Day;**
- § **mail information to voters about voting equipment purchased to replace punch card/lever machines;**
- § **produce and run radio and TV spots about registration deadlines, rights and responsibilities, absentee voting, information about grievance procedures, provisional ballots and ID requirements?**

Generally, Section 101 funds may be used to educate voters concerning voting procedures, voting rights, and voting technology. Section 251 can only be used for the educational costs that benefit federal elections, as those funds are restricted to improving the administration of federal elections funds, and subject to Section 251(b). However cost reasonableness must be considered. Furthermore, the state should carefully consider the prudence of funding an ongoing expense

such as printing and distribution charges with a one-time funding source like these HAVA funds. These costs will inevitably be assumed by the state or local government upon the exhaustion of federal funds.

24. May HAVA section 101 funds be used to buy children's coloring books (educational)?

No. Pursuant to the language of HAVA, the funds must be expended to educate "voters" or groups of people who meet state voting requirements. As coloring books are traditionally geared towards the young (who are not eligible to vote) this use of HAVA 101 Funds appears not to meet the fund's educational use requirements.

Training Election Officials

25. May HAVA funds be used to create video training aids or instruction lead training, or employ a full time training manager for Officers of Election on new voting equipment, provisional ballots and/or ID requirements for first time mail registrants?

Yes. Section 101 funds may be used to train election officials, poll workers, and election volunteers. Section 251 can only be used for the educational costs that benefit federal elections, as those funds are restricted to improving the administration of federal elections funds subject to the requirements of Section 251(b). The state should carefully consider the prudence of funding an ongoing expense such as printing and distribution charges with a one-time funding source like these HAVA funds. These costs will inevitably be assumed by the state or local government upon the exhaustion of federal funds.

26. May HAVA funds be used to provide food during a training of election officers (poll workers) on new voting equipment before the initial use?

Generally, HAVA funds may be used to purchase food consumed during training. The provision of food is covered by Office of Management and Budget Circular A-87, Attachment B, *Cost Principles for State, Local and Indian Tribal Governments* see [Meetings and Conferences](#). Meals associated with meetings and conferences are allowable. However, meals that are used for entertainment purposes and alcohol are not allowable.

Get Out the Vote

27. May HAVA section 101 funds be used to buy "voting is cool" bracelets?

No. In order to fit within the allowable expense of voter education, the item procured must provide information on voting procedures, rights or technology. Items intended to "get out the vote" or merely encourage voting do not meet this requirement. Items that are not fundamentally educational may be considered advertising or public relations costs prohibited by Office of Management and Budget Circular A-87, Attachment B, *Cost Principles for State, Local and Indian Tribal Governments* [advertising and public relations costs](#).

28. May HAVA section 101 funds be used to buy "Top Ramen" as a humorous means to attract the attention of college students to the importance of voting?

No. In order to fit within the allowable expense of voter education, the item procured must

provide information on voting procedures, rights or technology. Items intended to “get out the vote” or merely encourage voting do not meet this requirement. Items that are not fundamentally educational may be considered advertising or public relations costs prohibited by Office of Management and Budget Circular A-87, Attachment B, *Cost Principles for State, Local and Indian Tribal Governments* [advertising and public relations costs](#).

Legal Fees

29. May HAVA funds be used to employ legal counsel to advise and or represent the Secretary of State and/or State Election Commissioners in litigation pertaining to the implementation of the State HAVA plan?

According to the plain language of HAVA in Sections 101(b)(2) and 251(f), funds distributed under Sections 101 and 251 cannot be used to pay for costs associated with litigation unless the exceptions in Sections 101(b)(2)(A) and 251(f)(1) which permit legal expenses covering the implementation of HAVA (not a State provision that is more strict than the provisions of HAVA).

30. Whether HAVA funds (101 and 251) can be spent to determine whether the proposed uses of HAVA funds for litigation are allowable, allocable, and reasonable?

Yes. However, grantees generally seek advice from the agency that administers the grant on what constitutes an allowable cost. A State may be able to obtain the information that it needs without the necessity of a legal opinion by consulting with other state departments that are administering federal grant programs at the state level. Grantees are encouraged to request the assistance of the EAC in determining the permissibility of certain costs rather than expending HAVA funds to make this determination. Office of Management and Budget Circular A-87, Attachment B, *Cost Principles for State, Local and Indian Tribal Governments* see [Defense and prosecution of criminal and civil proceedings, and claims](#), allows for legal expenses required in the administration of a federal program.

Statewide Voter Registration Database

31. May HAVA funds be used to pay to maintain and support a HAVA compliant statewide voter registration system?

Yes. Maintenance of a statewide voter registration system can be paid for from Section 251 funds or Section 101 funds. However, cost reasonableness must still be considered. The state should carefully consider the prudence of funding an ongoing expense such as printing and distribution charges with a one-time funding source like these HAVA funds. These costs will inevitably be assumed by the state or local government upon the exhaustion of federal funds.

Reimbursement for Prior Expenses

32. May HAVA Section 251 funds be used to reimburse a state for statewide voter registration database costs incurred prior to award of the funds?

The EAC has concluded that (for the purposes of requirements payments) any pre-award cost “incurred pursuant to negotiation and in anticipation of grant award”, as required by Office of Management and Budget Circular A-87, Attachment B, *Cost Principles for State, Local and Indian Tribal Governments* see [Section 31, Pre Award Costs](#); is reimbursable if the cost was included in a (later) approved HAVA state plan and it was incurred after Congress appropriated

HAVA requirements payment funding on February 20, 2003. In order to be properly attributed as a pre-award grant cost, a cost must have been necessary to incur in order to meet the scheduled requirements of the grant. Requirements payments provided states to meet HAVA Title III requirements include a mandate for the creation of a Statewide Voter Registration Database (42 U.S.C. §15483(a)) on or before January 1, 2004 (42 U.S.C. §15483(d)) or apply for a waiver (for good cause shown) to extend the deadline to January 1, 2006. The EAC has concluded that it is reasonable for a State to conclude that pre-award expenditures on Statewide Voter Registration Databases were necessary in order to meet HAVA timelines. Pre-award costs expended to procure a voter registration database that will meet HAVA requirements fits the use limitation. The cost must not have been allocated to meet the states maintenance of effort requirement or 5% matching fund requirement. In order to properly allocate a pre-award cost to a grant, recipient must get the written approval of the awarding agency, the EAC.

33. What voting machine purchases made prior to the passage of HAVA are reimbursable under HAVA?

Voting machine purchases made prior to the passage of HAVA and after January 1, 2001 are reimbursable under Sections 102 and 251. In addition, Section 251(c)(1) of HAVA permits reimbursement of voting machine purchases made after the federal general election in 2000. If Section 102 funds are used to reimburse expenses incurred to purchase voting systems those purchases (1) must have been made after January 1, 2001; (2) must have been made to replace punch card or lever voting systems used on or before the deadline for submitting certifications established in Section 102; and (3) must have been used to purchase voting systems that comply with Section 301(a) of HAVA. In addition, the amount of reimbursement per precinct cannot exceed the pro rata amount distributed by the General Services Administration. If Section 251 funds are used as reimbursement for HAVA compliant voting machine purchases made on a multi-year contract, then pursuant to Section 253(a)(5) the amount of the state's matching funds must be increased in an amount equal to the amount of the reimbursement. If Section 251 funds are used as reimbursement for voting machine purchases made on other than a multi-year contract, the provision requiring an increased matching funds does not apply.

34. May states use Section 251 funds to reimburse a county or local government for its purchase of voting equipment?

Yes. The funds can only be used to reimburse the purchase of voting systems that meet the requirements of Section 301(a) of HAVA; purchase must have occurred after the November 2000 election; and if the money is used to reimburse a purchase of voting equipment on a multi-year contract, then the state must increase its maintenance of effort expenditure by the amount of the payment and additional matching funds are required under Section 253(b)(5).

35. May a State reimburse a County that has fully satisfied the payment obligation to the voting system vendor for the purchase of voting equipment made prior to the State receiving HAVA funds?

Section 251(c) of HAVA contemplates using Title II funds for the purpose of reimbursing States for expenses associated with voting equipment that meets the requirements of HAVA purchased

prior to the availability of funds under HAVA. This concept of reimbursement applies to the county or other local government unit that purchases voting equipment in lieu of such purchases on a state level. HAVA funds may reimburse and replace county funds that were obligated after October 29, 2002, (or obligated prior to January 1, 2001 under a multi-year contract) in advance of the receipt of federal funds. Thus, if the county has already earned those reimbursement payments, it can re-appropriate the funds to uses it deems proper, subject to any conditions established by the State in granting funds to counties.

36. May HAVA funds be used to reimburse counties for vendor voting system maintenance fees?

Yes. Either Section 101 or Section 251(b) funds can be used for expenses related to maintenance of voting systems. Under Section 251(b), a state is limited to the amount that it would have been entitled to as a minimum payment until the state meets the requirements of Title III.

Affirmative Action Plans

37. Does Executive Order 11246, dealing with affirmative action plan requirements, apply to a State because it received more than \$65 million from the federal government under HAVA?

No. The provisions of Executive Order 11246 apply to contractors and subcontractors with the federal government. The funds provided by EAC under HAVA do not meet the definition of a contract as stated in the Federal Acquisition Regulations, [Part 2.101](#), and as defined by the Government Accountability Office in Principles of Federal Appropriations Law ([GAO Red Book, Volume II](#), page 10-10).

Accounting for HAVA Funds

38. What is the proper year to account for retroactive reimbursement payments made under HAVA for the Single Audit Act?

The funds should be included in the audit of the fiscal year in which the funds were expended, which is the fiscal year in which the funds were received from the Federal Government and then appropriated to use by the state or county. So, if the funds were received in FY05 (October 1, 2004 – September 30, 2005) and appropriated in FY05 by the state or county as reimbursement for expenses made in a previous fiscal year by the state or county, then the funds should be covered by the FY05 audit.

39. What is the grant period for HAVA funds?

EAC has established the grant period for HAVA Title II funds as the period beginning on the date of disbursement of the funds to the state and ending when the state and/or a political subdivision of the state expends all of the funds distributed by EAC to the state, all matching funds, and all interest earned on either the federal funds or state matching funds.

40. When do the grant period end and the record keeping requirement start for HAVA funds?

The record keeping requirement begins upon the close of the grant period, when the last and closing report is filed. The grant period closes when the state (or political subdivisions of the state on its behalf) has expended all federal, state and interest funds contained in the election fund.

41. If a sub-grantee (State grant of HAVA funds to a county or local government) misspends HAVA funds will the EAC recover the funds directly from the sub-grantee?

No. The EAC will not be engaged in recouping funds from a local government that were misspent by a local government or which were overpaid to a local government under a subgrant, the obligation is on the state. The EAC will recoup any funds misspent by a local government from the state government.

42. What CFDA number do I use when reporting my expenditure of HAVA funds?

The following CFDA numbers have already been assigned to HAVA funding programs: (The Secretary of State's office should be able to tell you which HAVA funds were provided to a county.)

- 39.011 - Title I, sections 101 and 102 - "early money" election reform payments made to States (distributed by the General Services Administration in 2003);
- 93.617 - Title II, section 261 - grants to States for voting access for individuals with disabilities (aka EAID, distributed by the U.S. Department of Health and Human Services in 2003, 2004, and 2005);
- 93.618 - Title II, section 291 - grants to State protection and advocacy systems to promote voting access for individuals with disabilities (distributed by the U.S. Department of Health and Human Services in 2003, 2004, and 2005);
- 90.400 - Help America Vote College Program - grants to promote the participation of college students as nonpartisan poll workers (distributed by EAC before 9/30/04); and
- 90.401 – Sections 251- 258 - Requirements Payments to States – (distributed by the EAC in 2004 and 2005)

43. Does the state need to notify the EAC of the states compliance and intent to use 251 funds for "other election improvements"?

Yes. Consistent with Section 251(b) in order to use remaining Title II funds for the improvement of the administration of elections for federal office, the state must submit a verification that all of the Title III requirements have been met (not just the voting system requirements) or certify prior to the time that all Title III requirements are met that the state will not use more than the minimum payment amount. This does not alleviate the responsibility that the state has to assure that its spending is in keeping with its state plan. Thus, if the proposed spending on improving election administration is not reflected in the state plan and represents a material

change the state plan must be changed prior to the change in spending.

Income from HAVA Funds

44. May a state or county rent or lease out its voting systems?

Generally, a state or county can rent or lease out its voting systems. Common Rule, 41 C.F.R. § 105-71.32 Equipment, prohibits a grantee from using a piece of equipment purchased using grant funds to compete unfairly with the private sector. If a State rents or leases its voting machines out it must do so in a way that does not thwart competition with the private sector. The price paid by the lessee must be a competitive price. Equipment is defined by the common rule as "tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above." If the voting systems meet the definition of "equipment" either under the Common Rule or state laws, rules or regulations, the restriction must apply.

Income from leasing voting equipment to other jurisdictions would be considered program income, see OMB Circular A-102, Common Rule, 41 C.F.R. § 105-71.25 Program Income. The only appropriate treatment of income classified as program income during the grant period is for the county to dedicate the income to uses permitted under HAVA, Section 251. Section 251 allows the use of HAVA funds to implement the requirements of Title III and, after those requirements is met, to improve the administration of elections for federal office. After the expiration of the grant period, the income generated by the lease of voting systems may be used by the county as it chooses. (See Question 39 for the definition of grant period).

Cost Sharing

45. Must a county, the sub-grantee of HAVA funds, enter into an agreement with each municipality for the use of Federal Funds or is the agreement between the state and county sufficient?

The state must follow its own laws and procedures regarding the distribution of grant funds when issuing a subgrant, but must also assure that the subgrantee is aware of the limitations imposed by the federal grant. A state must follow its own law as to whether a cost sharing agreement is required or some other form of grant agreement is needed. EAC suggests that there be some documentation that supports the transfer of these funds to the local governments, whether it be a certification by the governments they will comply with the limitations or that the governments receive funds on a cost reimbursement basis after providing a request for the funds and proof that they were spent in accordance with the state and federal restrictions. Office of Management and Budget Circular A-102, The Common Rule, 41 C.F.R. § 105-71.37, Subgrants, covers the requirements for states that issue subgrants of federal funds.

Matching Funds

46. May a state use its Elections Board staff compensation as an in-kind match to

help meet the Help America Vote Act's (HAVA) 5% matching requirement (Section 253(b)(5) of HAVA, 42 U.S.C. § 15403(b)(5))?

In-kind contributions may be accepted to meet the 5% matching requirement, as HAVA does not specifically require a “hard” or cash match, but doing so may violate HAVA's maintenance of effort provision. The services costs of the individuals who shifted from other administrative or managerial activities within the Elections Board to HAVA specific projects activities must be consistent with the authorized uses to meeting the requirements of Title III and improving the administration of elections for federal office. The State has an obligation under HAVA Section 254(7) to maintain its expenditures “for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.” A State is required to maintain its previously defined expenditures on activities funded by Requirements Payments in addition to its 5% matching obligation. If the individuals were previously paid by the State to work on improving the administration of Federal elections as either a direct cost, as an election administrator, or as an indirect cost, as a manager or member of the support staff and assuming all State expenditures have remained constant, using these costs to serve as an in-kind match towards the States 5% matching obligation accomplishes nothing more than shifting State expenditures from meeting HAVA's maintenance of effort provisions to meeting the statute's matching requirement. In the end, there has been no increase in State spending. While in-kind contributions, such as employee compensation, may be used to meet HAVA's matching requirement, such contributions must create an overall increase in State spending.

47. How do I calculate the amount needed for our state's 5% match?

According to HAVA Section 253(b)(5), the State match is 5% of total amount to be spent (taking into account the Federal amount + the State amount). The formula for determining the amount of state matching funds based on the federal funds requested is:

$$(\text{Federal Dollars}/.95) = \text{Federal Dollars} + \text{State Match}$$

Deriving from that formula an equation that would allow us to figure the Federal dollars from the available State match:

$$\text{Federal Dollars} = 19 \times \text{State Match}$$

UPDATED: 48. Can a State use its state matching funds to satisfy the maintenance of effort requirement?

No, a State may not use state matching funds to satisfy the requirement that it maintain its effort. Both maintenance of effort and matching funds requirements are considered cost sharing methods, ways by which Congress and thereby the Federal Government get states to share in the expense of funding a particular endeavor. Maintenance of effort requirements are considered different from matching fund requirements in that the intent, generally, is to assure that the Federal funding actually increases the amount of funding to a particular program or task.

While there is no legislative history on this particular issue, a plain reading of HAVA must result

in an understanding that Congress included two separate and distinct cost sharing requirements, matching funds and maintenance of effort. Congress did not intend for one of these cost sharing methods to cancel the other. Rather, it is apparent that Congress intended that the state both contribute to the improvement of election systems through the 5% match requirement as well as the fact that the Federal and state funding would increase the funding to election administration efforts.

Federal Election

49. Does the HAVA, specifically section 301, definition of "election for federal office", found at 42 USC 1973ff-6, include a presidential primary which is an election of delegates to a national political convention?

Federal campaign finance laws and regulations define these types of elections as federal elections ([See 11 C.F.R. Part 100.2\(c\)\(2\) and \(3\)](#)) and case law interpreting 42 U.S.C. Section 1973i relating to prohibited election offenses consider a presidential preference primary to be an election for federal office. While HAVA does not define an election for federal office, the statements of law regarding other election processes are instructive as to the meaning of the term for purposes of HAVA. State law may interplays. Some states have a definition of federal election that excludes a presidential preference primary. While these statutes may be enacted for reasons related to the cost of an election, etc., they must be considered.

50. What is a federal election?

The Voting Section, U.S. Department of Justice (charged with enforcing the requirements of HAVA Title III), addressed this issue: HAVA does not contain a definition of the term "election for federal office." However, Section 3 of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg-1(1)&(2), defines "election" and "federal office" as those terms appear in the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1) & (3)). It is the Department's view that the requirements of Title III of HAVA were intended to apply in any general, special, primary, or runoff election for the office of President or Vice President, including presidential preference primaries, and any general, special, primary, or runoff election for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress from the 50 states, the District of Columbia, and the four Territories. The EAC has taken the same approach with regard to the federal funding programs that the agency oversees (HAVA Title I "early money" and Title II requirements payments).

Enforcement

51. Will restrictions of Section 251 be lifted on a by-county basis when a county meets the requirements of Title III of HAVA?

No. The plain language of Section 251(b)(2) of HAVA requires that the state have implemented the requirements of Title III prior to using more than what the state could have obtained as a minimum payment for activities to improve the administration of elections for federal office.

Thus, the Section 251 restrictions will not be lifted on a county-by-county basis.

52. What types of penalties might be imposed against a State if a county's voting system is found non-compliant with HAVA?

The Department of Justice is given enforcement authority over Title III of HAVA. Any claim, law suit, or request for remedies including penalties would be sought against the State for its failure or one of its county's failure to comply with HAVA, would be brought by the Department of Justice.

53. How will the EAC treat noncompliant precincts after the deadline for replacement of punch card and lever voting systems under Section 102 of HAVA?

The EAC expects the state to repay a pro rata portion of the funds received by the state in compliance with the requirement of Section 102(d). That pro rata portion would be determined by multiplying the percentage of noncompliant precincts with the amount of funding originally received under Section 102.

54. Does a State law that permits some small towns to use paper ballots for non-federal elections instead of HAVA compliant voting equipment violate the 'private and independent' requirement of HAVA?

No. The voting equipment provisions of HAVA apply only to elections for Federal office. However, there may be state laws, rules or regulations that require the use of accessible voting systems in state and/or local elections.

55. Can a state request an extension for complying with the voting system standard requirements in Section 301?

No. Section 301(d) of the Help America Vote Act of 2002 (HAVA) requires all States to comply on and after January 1, 2006 with the requirement that each voting system used in elections for Federal office must meet the HAVA Title III, Section 301, voting system standards. The EAC has no authority to extend or waive this statutory deadline. The U.S. Department of Justice, the agency authorized by HAVA to enforce Title III provisions, has made it clear that the agency plans to enforce this deadline. (See letter DOJ sent to Louisiana regarding this issue: <http://www.usdoj.gov/crt/voting/hava/lavotsyst.htm>) Only the enactment of Federal legislation providing for the extension or waiver of this deadline can change this requirement.

HAVA Section 102(a)(3)(B) did permit States, which had received Title I, Section 102, funds to replace punch card and lever machine voting systems, to file for a waiver of the original November 2, 2004 replacement deadline. Twenty-three of the thirty States that received such funds requested the waiver. The waiver gives these States until the first election for Federal office held on or after January 1, 2006 to replace such systems without risk of losing these Federal funds. The first Federal election would normally be the 2006 primary election for Federal office, unless the State holds an earlier special election for Federal office to fill a vacancy.

